



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 8, 1998

Mr. Hugh W. Davis, Jr.
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102-6311

OR98-0925

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114455.

The City of Fort Worth (the "city") received a request for a copy of the sworn statement given by the requestor regarding a specific sexual harassment investigation. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted document.

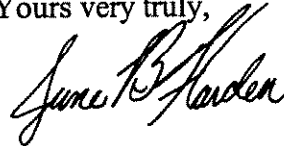
The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. *The city must meet both prongs of this test for information to be excepted under 552.103(a).*

It appears from the information submitted that the requestor has filed a discrimination complaint with the Equal Employment Opportunity Commission (the "EEOC"). This office has previously held that a pending complaint before the EEOC indicates a substantial likelihood of potential litigation. Open Records Decision Nos. 386 (1983), 336 (1982), 281 (1981). Given the circumstances presented, we find that the city has met the first prong of the section 552.103(a) test. We also conclude that the requested information is related to the anticipated litigation. Therefore, the city may withhold from required public disclosure the requested information under section 552.103(a).

Generally, however, once records have been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the records. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, if the requested statement has been previously disclosed to the requestor, who is the opposing party in the anticipated litigation, the statement is not excepted from disclosure under section 552.103(a), and it must be provided. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, with the first name "June" and last name "Harden" clearly distinguishable.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/gle

Ref.: ID# 114455

Enclosures: Submitted document

cc: Ms. Pat Hale
2122 Mistletoe Avenue
Fort Worth, Texas 76110
(w/o enclosures)